

REMARKS

Claims 39 to 52 have been added, and therefore claims 13 to 52 are now pending.

With respect to paragraph three (3) of the Office Action, Applicants thank the Examiner for indicating that claims 14 to 17, 19 to 22, 24 to 27, 29 to 32 and 34 to 37 include allowable subject matter. While the rejections of the claims may not be agreed with as explained below as their traversal, to facilitate matters, claims 14, 19, 24, 29 and 34 have been rewritten as independent claims so as to include the respective features of their respective base claims 13, 18, 23, 28 and 33. It is therefore respectfully requested that the objections be withdrawn, since claims 14 to 17, 19 to 22, 24 to 27, 29 to 32, and 34 to 37 are allowable (and since the base claims are allowable as explained below).

With respect to paragraph two (2), claims 13, 18, 23, 28, 33 and 38 were rejected under 35 U.S.C. § 102(b) as anticipated by Zeller et al., U.S. Patent No. 6,073,740.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim limitations be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

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To facilitate matters, the features of claims 13, 18, 23, 28 and 33 have been included in corresponding claims 14, 19, 24, 29 and 34. As to claim 38, it now depends from allowable claim 34, although new claim 52 corresponds to claim 38 but depends from allowable claim 33.

The "Zeller" reference does not identically describe (or even suggest) the feature of determining a speed of a driven wheel of a motor vehicle as a function of transmission output rpm *and* of wheel speeds of the remaining driven wheels of the motor vehicle, as provided for in the context of each of rejected claims 13, 18, 23, 28 and 33. In particular, the "Zeller" reference only apparently refers to a process for tuning the switching state of a torque converter lock-up clutch in an automatic gear box by determining the transmission output rpm or all of the wheel speeds of the driven wheels of the motor vehicle. This reference also does not identically describe (or even suggest) the feature of determining the transmission output rpm and the wheel speeds of the driven wheels of the motor vehicle, or the feature of determining the speed of at least one driven wheel of a motor vehicle from a transmission output rpm and from the wheels speeds of the remaining driven wheels of the vehicle, as provided for in the context of the rejected claims.

It is therefore respectfully requested that the anticipation rejections be withdrawn.

Accordingly, claims 13 to 38 are allowable for all of the above reasons.

New claims 39 to 52 do not add any new matter and are supported in the specification. New claims 39 to 52 depend from allowable claims, and are therefore allowable for the same reasons as their respective base claims. In particular, claims 39 and 40, 41 and 42, 43 and 44, 45 and 46, 47 and 48 correspond to claims 16 and 17, 21 and 22, 26 and 27, 31 and 32, 36 and 37, except that their dependencies have been respectively changed from claims 14, 19, 24, 29 and 34 to claims 15, 20, 25, 30 and 35. New claims 49, 50, 51 and 52 correspond to claim 38, except that claims 49, 50, 51 and 52 respectively depend from allowed claims 35, 36, 37 and 33.

It is therefore respectfully submitted that claims 13 to 52 are allowable.

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CONCLUSION

In view of the foregoing, it is believed that the objections and rejections have been obviated, and that claims 13 to 52 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, and that the present application issue as early as possible.

Respectfully submitted,
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